

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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**JAMES THOMAS,**

Plaintiff,

and

**MIDDLESEX INSURANCE COMPANY  
and UNITED HEALTHCARE  
INSURANCE COMPANY,**

Involuntary Plaintiffs,

Case No. 19-CV-1224

v.

**BALDWIN & LYONS, INC.  
and BRINK'S, INC.,**

Defendants.

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**ANSWER, COUNTERCLAIM, CROSS-CLAIM AND AFFIRMATIVE DEFENSES OF  
INVOLUNTARY PLAINTIFF, UNITED HEALTHCARE INSURANCE COMPANY**

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NOW COMES Involuntary Plaintiff, United HealthCare Insurance Company, by its attorneys, Mallery & Zimmerman, S.C. by Matthew S. Mayer, and, as and for its answer and affirmative defenses to Plaintiff's Complaint, and its counterclaim and cross-claim, hereby alleges and shows to the Court as follows:

1. In answering Paragraph 1 of the Complaint, admits the allegations contained therein.
2. In answering Paragraph 2 of the Complaint, is without knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to any payments made to or

on behalf of Plaintiff, as well as any subrogation rights and/or interests; admits the remaining allegations contained therein.

3. In answering Paragraph 3 of the Complaint, admits in part and denies in part. Denies all allegations doubting or denying this answering party's subrogation rights and/or interests and puts Plaintiff to his strictest proof thereon; admits the remaining allegations contained therein.

4. In answering Paragraphs 4 through 6 of the Complaint, admits the allegations contained therein.

5. In answering Paragraph 7 of the Complaint, realleges and incorporates as if fully set forth hereat Paragraphs 1 through 4 of this answer.

6. In answering Paragraphs 8 through 11 of the Complaint, admits the allegations contained therein.

7. In answering Paragraph 12 of the Complaint, realleges and incorporates as if fully set forth hereat Paragraphs 1 through 6 of this answer.

8. In answering Paragraphs 13 through 15 of the Complaint, admits the allegations contained therein.

#### COUNTERCLAIM AND CROSS-CLAIM

NOW COMES Involuntary Plaintiff, United HealthCare Insurance Company, by its attorneys, Mallery & Zimmerman, S.C. by Matthew S. Mayer, and, as and for its cross-claim against Plaintiff, James Thomas, and its counterclaim against Defendants, Baldwin & Lyons, Inc. and Brinks, Inc., hereby alleges as follows:

1. Realleges and incorporates by reference herein the answer of Involuntary Plaintiff, United HealthCare Insurance Company.

2. At all times herein, United HealthCare Insurance Company contracted with the Centers for Medicare and Medicaid Services to administer Medicare benefits for Medicare beneficiaries of Medicare; and therefore, United HealthCare Insurance Company is a Medicare Advantage Organization.

3. At all times herein, Plaintiff, James Thomas, was covered by a federally-funded health plan (i.e., Medicare Advantage Plan) under which, United HealthCare Insurance Company paid medical expenses on his behalf as a result of the injuries sustained in the accident referenced in the Complaint.

4. Medicare Advantage Plans, including the plan as administered by United HealthCare Insurance Company, are regulated by federal law.

5. As a result of the medical payments made, or to be made, by United HealthCare Insurance Company, it is entitled to reimbursement from any recovery Plaintiff, James Thomas, may receive as a result of the claims as set forth in the Complaint pursuant to 42 C.F.R. § 422.108(d).

6. United HealthCare Insurance Company is entitled to subrogation against any Defendant found liable, or who has or will make payment directly or indirectly, for the injuries of Plaintiff, James Thomas, by way of settlement, judgment or otherwise, pursuant to 42 C.F.R. § 422.108(d).

#### AFFIRMATIVE DEFENSES

As and for its Affirmative Defenses to Plaintiff's Complaint, Involuntary Plaintiff, United HealthCare Insurance Company, by its attorneys, Mallery & Zimmerman, S.C., by Matthew S. Mayer, hereby alleges and shows to the Court as follows:

1. United HealthCare Insurance Company exercise the same rights to recovery from a primary plan, entity or individual that the Secretary exercises under the Medicare Secondary Payer Law pursuant to 42 C.F.R. § 422.108(f).

2. In the event Plaintiff, James Thomas, recover payments from a primary plan and United HealthCare Insurance Company is not reimbursed its lien, said Plaintiff and the primary plan are subject to liability under the Medicare Secondary Payer Act (“MSP”), 42 U.S.C. § 1395y(b)(2)(B)(iii).

WHEREFORE, Involuntary Plaintiff, United HealthCare Insurance Company, demands judgment as follows:

A. On its subrogation and/or reimbursement interest in the current amount of \$2,416.08, plus any other medical payments made, or to be made, as well as interest;

B. For the attorneys’ fees, costs, and disbursements of this Involuntary Plaintiff; and

C. For such other and further relief as the Court deems just and equitable.

DATED this 18th day of November 2019.

MALLERY & ZIMMERMAN, S.C.  
Attorneys for Involuntary Plaintiff, United  
HealthCare Insurance Company

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BY: Electronically Signed by Matthew S. Mayer  
MATTHEW S. MAYER  
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